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December 29, 2015

VIA ECF AND EMAIL

The Honorable Andrew L. Carter, Jr.
Thurgood Marshall United States Courthouse
40 Foley Square, Room 435
New York, New York 10007

Re: *In re: North Sea Brent Crude Oil Futures Litig.*, No. 13 MD 02475 (ALC)

Dear Judge Carter:

We write on behalf of Plaintiffs in the Consolidated Brent Derivative Traders' Action to respond to Defendants' recent letters [ECF Nos. 386, 387] informing the Court that a spokesman for the European Commission ("EC") indicated in an e-mail that the EC is "currently not investigating further behaviors in price benchmarks for the crude oil sector." The EC's investigation has continued largely outside of the public eye, with the exception of occasional confirmations of raids on Platts and energy companies including BP, Shell and Statoil, or reports indicating that the EC was ramping up its probe with evidence requests. *See, e.g.*, "EU Said to Ramp Up Oil-Benchmarks Probe With Evidence Request", *Bloomberg Business*, September 17, 2015, which is attached as Exhibit 1.

The news of the EC's formal investigation into ethanol and decision not to pursue at the present time further behaviors in the crude oil sector cannot and should not be viewed as an exoneration of any defendant from the unlawful conduct that Plaintiffs allege in detail in their Complaint. One of the news articles that Defendants submitted to the Court expressly indicates that the EC "suspected wrongdoing", but that it had finite resources, a new administrator, and a growing list of antitrust matters for which the new Chief Competition Commissioner wanted to free up resources. [ECF 386-3]. These news articles also suggest that the EC's oil probe was hampered by the absence of a leniency applicant, unlike the EC's probe into manipulation of LIBOR benchmarks in which banks owned up to wrongdoing to seek leniency. *See id.* ("When there is no leniency applicant, the commission's task is much more difficult and this may explain why a case is not pursued.").

Plaintiffs further note that in addition to announcing in a press release that it is pursuing a formal investigation into ethanol, the EC emphasized that it had in 2013 – the same year that the EC raided Platts, Shell, BP and Statoil – proposed a regulation to "enhance the governance, integrity and reliability of benchmarks used in financial instruments and contracts." [ECF 386-4]. The regulation, which according to the EC's press release is in its final stage of adoption, provides for criminal sanctions for the manipulation of financial and other benchmarks and will arm the EC with laws similar to the Commodity Exchange Act to prosecute market abuse like that alleged in Plaintiffs' Complaint.

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Regardless of whether any U.S. or European authorities announce a formal investigation, Plaintiffs submit that this case should not be decided on the basis of press reports of select EC e-mails. It is notable that the EC also recently closed its probe of the Credit Default Swaps (“CDS”) market, notwithstanding that Judge Cote found that plaintiffs in related civil class action litigation pending in this District had sufficiently pleaded an antitrust conspiracy that rigged the CDS market. *See In re Credit Default Swaps Antitrust Litig.*, No. 1:13-md-02476 (DLC), ECF No. 321, 2014 WL 4379112 (S.D.N.Y. Sept. 4, 2014). In October 2015, Judge Cote also granted preliminary approval of the terms of the settlement of CDS litigation, which includes defendants’ payment of \$1.86 billion, plus agreed changes to CDS licensing procedures to make the market more transparent for investors. *See id.*, ECF No. 465.

The ample factual content in the Complaint is more than sufficient for this Court to draw the reasonable inferences necessary to allow the *Brent* case to proceed past the initial pleading stage. We appreciate Your Honor’s consideration of these matters.

Respectfully submitted,

/s/ David E. Kovel

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Cc: Counsel of Record (via electronic filing)